

Wisconsin Pollutant Discharge Elimination System Individual Permit for Municipal Separate Storm Sewer System, Permit No. WI-S058416-4: Fact Sheet – March 2019

Purpose

The proposed permit requires an MS4 co-permittee to develop, implement, and maintain storm water management programs to reduce the discharge of pollutants from the MS4 to waters of the state. There are currently 19 municipally-owned or -operated municipal separate storm sewer systems (MS4s) in Dane County, Wisconsin covered under Wisconsin Pollutant Discharge Elimination System (WPDES) Permit No. WI-S058416-4. This WPDES permit expired on June 30, 2014. The Wisconsin Department of Natural Resources (Department) is proposing to reissue WPDES Permit No. WI-S058416-4 to continue the coverage of storm water discharges from these 19 MS4s and the City of Stoughton and Village of Cottage Grove. The City of Stoughton and Village of Cottage Grove submitted a written request to be covered under this reissued permit as opposed to continuing coverage under the reissued MS4 permit WI-S050075-3. The Department will honor their request as they have been working with and attending quarterly meetings for many years with the other 19 MS4s covered under this permit through the Madison Area Municipal Storm Water Partnership (MAMSWaP) organization. Therefore, this permit will be reissued to 21 MS4s, which are listed on the cover page of the permit.

This fact sheet summarizes the Department's process and rationale for developing and issuing the MS4 permit and highlights its most significant requirements. This fact sheet does not describe all conditions of the MS4 permit, as many of them are self-explanatory.

The Department's Authority to Issue WPDES Permits

Under the Federal Clean Water Act (CWA), the United States Environmental Protection Agency requires National Pollutant Discharge Elimination System (NPDES) permits for storm water discharges associated with MS4s under 40 CFR Part 122.

The Department is the delegated authority to issue state permits comparable to NPDES permits in Wisconsin. These permits are issued under the WPDES permit program as authorized by ch. 283, Wis. Stats. The Department has promulgated ch. NR 216, Wis. Adm. Code, *Storm Water Discharge Permits*, which under Subchapter I specifies the applicability and permit requirements for MS4 permittees. Also, the Department has promulgated ch. NR 151, Wis. Adm. Code, *Runoff Management*, which contains the applicable performance standards for storm water permittees, including MS4s.

Under ch. 283, Wis. Stats., the Department may issue two types of WPDES permits: 1) individual permits and 2) general permits. Individual permits are tailored to include site-specific requirements that are applicable to an individual discharger. A general permit is written to cover a broad class of similar dischargers where environmental protection can be achieved through a set of general provisions that apply to all dischargers in a particular category. The proposed permit is an individual permit.

The Department's Regulation of Storm Water from the MS4

In Wisconsin, WPDES permits are issued by the Department with federal oversight from the USEPA. The Department is responsible for the issuance, reissuance, modification, and enforcement of all WPDES permits issued for discharges into the waters of the state, except discharges occurring in Indian Country which are regulated directly by the USEPA. No person may legally discharge to waters of the state without a WPDES permit issued under this authority.

In 1987, Congress amended the CWA, authorizing a national program of comprehensive storm water pollution control for MS4s, certain industries, and construction sites. In 1993, ch. 147, Wis. Stats., (now ch. 283, Wis. Stats.) was amended to include storm water as a "point source" discharge and to require that the Department promulgate administrative rules for permitting the discharge of storm water. As a result, the Department created ch. NR 216, Wis. Adm. Code, for permitting storm water discharges from certain municipalities that own or operate MS4s, storm water discharges associated with industrial activity, and storm water discharges associated with land disturbing construction activity.

In November 2016, the USEPA promulgated the MS4 General Permit Remand Rule (40 CFR Part 122). The USEPA amended its regulations governing how small MS4s obtain coverage under NPDES general permits. The final MS4 General Permit Remand Rule establishes two alternative approaches an NPDES permitting authority can use to issue and administer small MS4 general permits that address a partial remand of the USEPA's Phase II storm water regulations by the U.S. Court of Appeals for the Ninth Circuit. Both approaches ensure that the permitting authority establishes the necessary "clear, specific, and measurable goals" for the MS4 to "reduce the discharge of pollutants from the MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act." Referred to as the "MS4 permit standard," both approaches ensure that the public participation requirements of the CWA are met. The Department is applying the Comprehensive General Permit approach to issue this MS4 permit and cover the MS4s under the revised MS4 permit concurrently. Under the Comprehensive General Permit option, all requirements are contained within this permit. For more information on the MS4 General Permit Remand Rule, use a standard Internet search engine and type in "epa remand rule."

Additionally, in December 2015, the USEPA promulgated the NPDES Electronic Reporting Rule (40 CFR Parts 9, 122, 123, 124, 127, 403, 501, and 503). This regulation requires the electronic reporting and sharing of NPDES program information. The USEPA identifies specific NPDES information, or data elements, that NPDES permitting authorities, such as the Department, are to electronically collect, manage, and share to the USEPA. Therefore, the Department uses applicable data elements to assist in writing "clear, specific, and measurable" permit language.

The EPA Remand and eReporting Rules are informing most of the revisions in the proposed general permit. To begin communicating these changes to permittees, the Department held an informational webinar "Municipal Separate Storm Sewer System (MS4) Program Updates: A statewide summary of the 2017 MS4 annual reports and an overview of upcoming MS4 general permit revisions" on September 12, 2018. Additionally, the Department solicited 'pre-public comment period' feedback from stakeholders (i.e., permittees, consultants, regional storm water groups, non-profit organizations, and the general public) via a public questionnaire and regional listening sessions. The Department wanted to better understand what areas of the previous MS4 general permits could benefit from further clarification, which also assisted us in implementing EPA's requirement of "clear, specific, and measurable" permit language.

Applicability

Section NR 216.02, Wis. Adm. Code, specifies the MS4s that require permit coverage. This permit when reissued will cover 21 MS4s. The Department will notify each MS4 in writing, after WPDES Permit No. WI-S058416-4 becomes effective, that it has received permit coverage under the reissued permit.

Overview and Significant Changes from the Previous Version of the Permit

This proposed permit includes the conditions required by s. NR 216.07, Wis. Adm. Code, which consists of the following six categories, or minimum control measures:

- Public Education and Outreach

- Public Involvement and Participation
- Illicit Discharge Detection and Elimination
- Construction Site Pollutant Control
- Post-Construction Storm Water Management
- Pollution Prevention

This proposed permit follows federal and state requirements and provides flexibility for a municipality to develop, implement, maintain, and evaluate its MS4 programs to help determine appropriate methods for meeting permit requirements. This proposed permit allows a permittee to comply with the permit requirements either individually or in collective arrangement with other municipalities. Each permittee is responsible for meeting all the applicable requirements for its own MS4. However, permittees may find that collectively pooling their resources will be more efficient and cost-effective to comply with certain requirements.

This proposed permit requires a permittee to maintain its programs developed and implemented under the previous version of the MS4 permit, comply with measurable goals, and to summarize its efforts at meeting the permit requirements in an annual report. In addition, this proposed permit continues to require compliance with the developed urban area performance standard of s. NR 151.13, Wis. Adm. Code. A summary of the most significant changes from the previous version of the MS4 permit is provided below.

General

- The numbering system was updated from the previous version to provide consistency with the reissued MS4 general permit WI-S050075-3.

1.3 Co-Permittees

- The City of Stoughton and Village of Cottage Grove were added as co-permittees. The City of Stoughton and Village of Cottage Grove were previously covered under MS4 general permit WI-S058416-4, however, they submitted a written request to be covered under this permit. The Department will allow this as they have been working with the other members of this permit and attending quarterly meetings as members of the Madison Municipal Storm Water Partnership (MAMSWaP) information and education organization for many years.

1.5 Authorized Discharges

- The permit expanded its authorization to pumped storm water discharges when written approval is obtained from the Department's storm water program.

1.7 Outstanding and Exceptional Resource Waters

- Definition in this section were moved to the definition section 7 of this permit.

1.8 Impaired Waterbodies and Total Maximum Daily Load Requirements

- The TMDL requirements have been revised within this section and it refers to additional requirements in Appendix A.

1.12 General Storm Water Discharge Limitations

- Section 1.12 of the proposed permit was updated to be in accordance with s. NR 102.04, Wis. Adm. Code.

3. STORM WATER MANAGEMENT PROGRAM REQUIREMENTS

- The proposed permit establishes the measurable goals and requires a co-permittee to maintain compliance with the measurable goals for the programs developed under sections 3.1 through 3.6.

3.1 Public Education and Outreach

- Through stakeholder outreach prior to the public comment period, the Department found that permittees were very unclear on the requirements of this section. There was little information on what was expected under this minimum control measure to measure compliance or what mechanisms should be used. The Department also found that stakeholders identified public education and outreach as one of the top “mechanisms as most effective to improving water quality from permitted MS4s,” and permittees responded that the “community needs to know why best management practices are important and how they can help and play a role in improving water quality.”
- To clarify this section from the previous permit, the Department incorporated language that complies with USEPA eReporting Rule requirements, which includes data elements relating to:
 - the “Topics” the permittee should be addressing in their public education and outreach program,
 - the “Delivery Mechanisms” the permittee can choose from, and
 - the “Target Audience” the permittee identifies for each topic.
- The Department wanted to make it clear in the proposed permit on how compliance would be measured for these permit requirements.
 - Section 3.1.1 Topics. The Department proposes that the permittee addresses a minimum of six topics each year and addresses all eight at least once during the permit term. All municipality types (County, City, Village, Town, and Nontraditional) averaged addressing six to seven topics in the 2017 MS4 Annual Report. Through MS4 program evaluations, the Department found that not all permittees were sufficiently addressed public education and outreach, therefore the Department proposes that permittees shall meet compliance by addressing at least six topics during the permit term.
 - Section 3.1.2 Delivery Mechanisms. The Department proposes “Delivery Mechanism” types to choose from. The Department proposes the permittee uses at least four public education delivery mechanisms each year, and at least two mechanisms would be active/interactive. Also, through MS4 program evaluations, the Department has found that many permittees are not actively engaging the public. Therefore, the proposed permit establishes minimum requirements for “active/interactive” delivery mechanisms.

- Section 3.1.3 Target Audiences. The Department proposes that the permittee identifies who its target audience will be for each topic in its public outreach and education program.

3.2. Public Involvement and Participation

- Similar to above, through stakeholder outreach prior to the public comment period, the Department found that this minimum control measure was most commonly chosen as “not sure on how to implement” by permittees, and the requirements of this section needed to be clarified.
- To clarify this section from the previous permit, the Department incorporated language that complies with USEPA eReporting Rule requirements, which includes data elements relating to:
 - the “Permit Activities” the permittee should be addressing in their public involvement and participation program,
 - the “Delivery Mechanisms” the permittee can choose from,
 - the “Target Participants” the permittee identifies for each activity.
- The Department’s goal is to make it clearer in the proposed permit on how compliance would be measured for these permit requirements. The Department identified the “Permit Activities” that the permittee shall notify the public on and encourage public input and participation on, including a “Volunteer Activity” requirement, and establishes “Delivery Mechanisms” and “Target Participant” types that the permittee will be required to identify in its storm water management program.

3.3 Illicit Discharge Detection and Elimination (IDDE)

- There are minor changes proposed in permit section 3.3, as the language from the previous version of the MS4 permit is anticipated to meet the intent of the USEPA Remand Rule. The Department also found via stakeholder outreach that the IDDE program is one of the programs that permittees are most comfortable with implementing.
- Section 3.3.2 of the proposed permit requires all permittees to perform ongoing dry weather field screening at 100 percent of their major outfalls. The dry weather field screening does not have to occur annually for major outfalls but does need to be completed at least once by the end of the permit term. It is proposed in this permit that permittees develop a prioritization procedure that assists them in screening select minor outfalls annually.
- Section 3.3.3.h. has been added to clarify what documentation is required when responding to known or suspected illicit discharges.

3.4 Construction Site Pollutant Control

- To meet the intent of the USEPA Remand Rule, a summarization of ch. NR 151, Wis. Adm. Code., construction site performance standards requirements were added in section 3.4.1.c., and procedures for construction site inspection frequency were created in section 3.4.4.

3.5 Post-Construction Storm Water Management

- Section 3.5.3 has been added to include written procedures for post-construction site plan review to be included in the post-construction storm water management program.
- Section 3.5.4 has been added to specify the documentation and tracking requirements for the long-term maintenance, inspection, and enforcement of storm water management facilities.

3.6 Pollution Prevention

- In the previous version of the permit, permittees were required to have an inventory of municipally-owned or -operated structural storm water best management facilities. Section 3.6.1 of the proposed permit defines the documentation required for statewide consistency on what should be included in the inventory.
- Section 3.6.2 of the proposed permit was updated to specify the documentation requirements of routine inspection and maintenance of municipally-owned or -operated structural storm water best management facilities, which are inventoried under section 2.6.1.
- Section 3.6.3 of the proposed permit clarifies requirements specific to public works yards or other municipally-owned or -operated properties.
 - Section 3.6.3.a., contains information that is required in a storm water pollution prevention plan.
 - Section 3.6.3.b., describes “no exposure” and specifies a process on how permittees certify for no exposure.
- Section 3.6.5 captures the “collection services” and “storm sewer system maintenance activities”.
 - Sections 3.6.5. a., b., and d. specify the documentation and tracking required for street sweeping, catch basin cleaning, and leaf management, respectively.
 - Section 3.6.5.c. was created to require proper material handling that prevents contamination of storm water runoff, regarding material collected from street sweeping and catch basin cleaning.
- Section 3.6.6 was added to clarify the documentation and tracking required for winter road management.
- Section 3.6.9 clarifies how often internal training and education of municipal staff, contractors, and municipal officials should occur, and what documentation is required for tracking internal trainings.

3.8 Storm Sewer System Map

- Section 3.8.3 requires co-permittees to update the City of Madison with changes to their storm

sewer map.

- Section 3.8.4 requires the City of Madison to submit an updated common storm sewer map with its annual report to the Department.

3.9 Annual Report

- The prior version of this permit included biennial reporting, but it has been changed to annual reporting. This was done to provide consistency with MS4 reporting statewide and municipalities were found to have a harder time reporting on information from two years prior.
- Section 3.9.8 was added to implement the USEPA eReporting Rule requirements and requires that the permittee submit its annual reports and other permit compliance documents electronically through the Department's electronic reporting system.

4. SPECIAL RESPONSIBILITIES FOR CERTAIN CO-PERMITTEES

- Section 4.2 contains new requirements for the City of Middleton to monitor its pumped discharge from Tiedeman Pond.
- Section 4.3 contains new requirements for the City of Stoughton to monitor its pumped discharge from Paradise Pond.

5. COMPLIANCE SCHEDULE

- The compliance schedule for new and updated permit requirements is listed in Table 6 of the proposed permit. Table 6 does not list all the requirements of the permit.

6.6 Spill Reporting

- Section 6.6 of the proposed permit was updated to be in accordance with s. NR 292.11(2)(a), Wis. Stats.

DEFINITIONS

- "Development" and "wasteload allocation" are new definitions added to this section of the permit. "New MS4 discharge of pollutant(s)" and "Original start date of coverage under an MS4 permit" definitions were in the body of the previous version of the permit and are moved to Section 7 "DEFINITIONS USED IN THIS PERMIT".

Total Maximum Daily Load (TMDL) Appendix

- The proposed permit has created an Appendix A for Rock River Basin TMDL permit conditions. The main body of the permit has the permit requirements that apply to all the permittees, while Appendix A establishes specific requirements that apply uniquely to permittees who are subject to the Rock River TMDL that was approved by the USEPA.

Appendix A: MS4 Co-Permittees Subject to the Rock River TMDL

- Appendix A provides the permit conditions for permittees subject to the Rock River Basin TMDL.
- This proposed permit requires permittees to begin implementing best management practices to show progress toward achieving compliance with the TMDL wasteload allocations.
 - Through stakeholder outreach prior to the public comment period, the Department found that permittees want the permit to better define what qualifies as meeting ‘progress’ toward achieving wasteload allocation targets; want flexibility but also clear requirements; and want to know what is expected for a plan.
 - In the proposed permit, while still giving MS4s flexibility, yet building more clear and specific expectation to help make reasonable progress towards meeting the TMDL, the Department drafted a suite of options that MS4s can choose from:
 1. Section A.3 – Participation in an approved Adaptive Management Plan: Permittee has chosen to participate in an approved Adaptive Management project.
 2. Section A.4 – TMDL Compliance Within this Permit Term: Establish full TMDL compliance within this permit term.
 3. Section A.5 – TMDL Compliance Over Multiple Permit Terms: Permittee demonstrates progress towards meeting compliance during the term of the permit.
 - a. Meet specified wasteload allocation percent reductions (proposed 20% Total Suspended Solids, 10% Total Phosphorus), or
 - b. Implement specified requirements that are more ‘non-quantifiable’ (such as redevelopment ordinance updates, expanding a municipal leaf collection program, inventorying the condition of conveyance systems and outfalls, etc.).

Additional Information

The proposed permit, fact sheet, and other MS4 related information are available from the Department’s website as indicated below. Web links to pertinent state statutes and administrative codes are also provided.

DNR WPDES Permits on Public Notice website:

<http://dnr.wi.gov/topic/Wastewater/PublicNotices.html>

DNR Storm Water Runoff Permits website:

<http://dnr.wi.gov/topic/stormwater/>

DNR Municipal Storm Water Permits website:

<http://dnr.wi.gov/topic/stormwater/municipal/>

DNR Storm Water Technical Standards, Models and BMPs website:

<http://dnr.wi.gov/topic/stormwater/standards/>

Chapter 283, Wis. Stats.:

<https://docs.legis.wisconsin.gov/statutes/statutes/283.pdf>

Chapter NR 151, Wis. Adm. Code:

https://docs.legis.wisconsin.gov/code/admin_code/nr/100/151.pdf

Chapter NR 216, Wis. Adm. Code:

https://docs.legis.wisconsin.gov/code/admin_code/nr/200/216.pdf